

### **REMARKS**

Claims 1-15 are currently pending. Reconsideration and allowance of all pending claims are respectfully requested in light of the following remarks. As a preliminary matter, it should be noted that Applicant's representative attempted to contact both the Examiner and her Supervisor (Ahmad Matar) via telephone on July 7, 2010, to discuss options for expediting prosecution of the present application and was advised via their respective outgoing voicemail messages that both are currently out of the office and unavailable until August 5 (Supervisor Matar) and August 9 (Examiner Al-Aubaidi). Accordingly, Applicant respectfully requests that the Examiner extend his representative the courtesy of a telephone conference to discuss this case prior to issuing another Office action should the Examiner deem that the present response does not place the claims in condition for allowance.

### **Rejections under 35 U.S.C. §103(a)**

Claims 1-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,241,533 to Kimoto et al. ("Kimoto") in view of U.S. Patent No. 6,721,334 to Ketcham ("Ketcham"). Applicants respectfully traverse this rejection on the grounds that these references are defective in establishing a *prima facie* case of obviousness with respect to the claims for the following reasons.

In particular, claim 1 recites *inter alia* "detecting a protocol of the first packet." In addressing this element, the Examiner states on page 3, lines 1-2, of the Office action, that "detecting the protocol of the first packet is obvious within the teachings of Kimoto." Applicant respectfully disagrees. In particular, the disclosure of Kimoto is totally devoid of any mention of "protocol," much less any sort of discussion of "detecting a protocol of" a packet. While the packets in Kimoto arguably conform to a "protocol," it is not apparent from or inherent in the disclosure of Kimoto that packets of the network described therein conform to different protocols; accordingly, one must logically assume from the specification of Kimoto that all of the packets conform to the same protocol. As a result, there would be no need to "detect" the protocol of any particular packet of Kimoto; performing such a step would be superfluous at best. Accordingly the Examiner is in error in his assertion that that the "detecting" step is obvious from the teachings of Kimoto and for at least this reason, the combination cannot be relied upon to sustain the rejection of claim 1.

In view of the foregoing, it is apparent that the rejection of claim 1 is not supported by the subject combination and should be withdrawn. Independent claims 10 and 15 include limitations similar to those of claim 1 and are therefore also deemed to be in condition for allowance. Claims 2-9 and 11-14 depend

from and further limit independent claims 1 and 10 and are therefore also deemed to be in condition for allowance for at least that reason.

Additionally and or alternatively, for reasons similar to those discussed above with respect to claim 1, the Examiner's position that claims 2, 3, 5, 7, 8, 12, and 14 are obvious in view of the cited combination is also in error. In particular, with regard to claims 2, 3, and 14, the Examiner argues on page 4, lines 3-6, that "having the first and the second packet containing circuit-based information is obvious" because "[o]ne may choose to have the packet containing any type of information desired." The Examiner cites no legal authority for his position in this regard. Similar improper and unsupported arguments are made with regard to claims 5 and 7, on page 4, lines 7-11, and claims 8 and 12, on page 4, lines 15-16. In response, as recognized by the USPTO in its guidelines entitled "Formulating and Communicating Rejections under 35 U.S.C. 103 for Applications Directed to Computer-Implemented Business Method Inventions," which is available online at the USPTO website at <http://www.uspto.gov/patents/resources/methods/busmeth103rej.jsp>, a simple, unsupported, statement that a difference is a "design choice" is insufficient rationale to support a legally adequate rejection, as it is a conclusion and not a statement of fact. In the present case, it appears that the Examiner has conveniently and impermissibly dismissed as a "design choice" any limitation that could not be found in the prior art.

In view of the foregoing, it is apparent that the Examiner's burden of factually supporting a *prima facie* case of obviousness has clearly not been met, and the rejection of the claims under 35 U.S.C. §103(a) as unpatentable over the combination of Kimoto and Ketcham is improper and should be withdrawn.

### **Conclusion**

All matters set forth in the Office Action have been addressed. Accordingly, it is believed that all claims are in condition for allowance. Favorable consideration and an indication of allowability are respectfully requested.

As noted above, should the Examiner deem that the present response does not place the claims in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

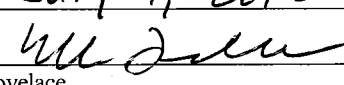


Brandi W. Sarfatis  
Registration No. 37,713

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HAYNES AND BOONE, LLP  
901 Main Street, Suite 3100  
Dallas, Texas 75202 3789  
Telephone: 214-651-5896  
Facsimile: 214-200-0853  
E-Mail: ipdocketing@haynesboone.com

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via EFS-Web on the following date.

Date July 7, 2010  
  
Ellen Lovelace